

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District <u>Boston</u>
Name (under which you were convicted): <u>Darrien Goetzendanner</u>		Docket or Case No.:
Place of Confinement: <u>MCI- Norfolk</u>	Prisoner No.: 05 - 11553 JLT	
Petitioner (include the name under which you were convicted) Respondent (authorized person having custody of petitioner) <u>Darrien Goetzendanner, a.k.a. Jah Rab S. B. Allah</u> v. <u>Luis Spencer, Superintendent</u>		
The Attorney General of the State of <u>Massachusetts</u> , <u>Thomas F. Reilly</u>		

PETITION

MAGISTRATE JUDGE Sorokin

- (a) Name and location of court that entered the judgment of conviction you are challenging: Berkshire County Superior Court, Pittsfield, MA
- (b) Criminal docket or case number (if you know): 92-378 through 84; 92-0668
- (a) Date of the judgment of conviction (if you know): February 5, 1993
- (b) Date of sentencing: February 5, 1993
- Length of sentence: 20-30 years
- In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
- Identify all crimes of which you were convicted and sentenced in this case:

<u>92-378 Agg. Rape 20-30</u>	<u>92-382 ABDW 3-5</u>
<u>92-379 Agg. Rape 20-30</u>	<u>92-383 AB G: File</u>
<u>92-380 Kidnapping 8-10</u>	
<u>92-381 ABDW 8-10</u>	
- (a) What was your plea? (Check one)

(1) Not guilty <input checked="" type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N.A.

RECEIVED PAID
 RECEIPT # 65818
 AMOUNT \$ 5.00
 BY DPTY CLK JN
 DATE 7/22/05

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Massachusetts Appeals Court

(b) Docket or case number (if you know): 93-P-1295

(c) Result: Conviction Affirmed

(d) Date of result (if you know): May 20, 1997

(e) Citation to the case (if you know): 42 Mass. App. Ct. 637 (1997)

(f) Grounds raised: Error of trial court to allow unqualified lay-
person to offer expert opinion and testimony re: Battered
Woman Syndrome to explain complaining witness behavior denied
Defendant a fair trial. 2. Defendant was denied effective
assistance of trial counsel in violation of 6th Amendment to
U.S. Constitution and Art. 12 of Mass. Dec. of Rights.

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: Supreme Judicial Court

(2) Docket or case number (if you know): FAR-09225

(3) Result: Further Appellate Review Denied

(4) Date of result (if you know): July 8, 1997

(5) Citation to the case (if you know): 425 Mass. 1105 (1997)

(6) Grounds raised: Same as appeal to Massachusetts Appeals Court

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Berkshire County Superior Court, Pittsfield, MA

(2) Docket or case number (if you know): 92-378 through 84; 92-0668

(3) Date of filing (if you know): June 1, 1994

(4) Nature of the proceeding: Motion for New Trial

(5) Grounds raised: 1. Error to allow unqualified layperson to give expert opinion and testimony re: Battered Woman Syndrome.
2. Ineffective trial counsel re: a. failure to impeach complaining witness with prior conviction; b. failure to object to jury venire; c. failure to press vigorously pre-trial motions
d. failure to object to inflammatory and prejudicial testimony;
e. failure to consult with client and conceding allegations of government.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☒ No ☐

(7) Result: Motion for New Trial Denied

(8) Date of result (if you know): December 5, 1994

- (b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: Berkshire County Superior Court, Pittsfield, MA

(2) Docket or case number (if you know): 92-378 through 84; 92-0668

(3) Date of filing (if you know): August 17, 2000

(4) Nature of the proceeding: Second Motion for New Trial

(5) Grounds raised: 1. Ineffective trial counsel failed to request a fresh complaint limiting instruction; 2. error for trial court not to give a fresh complaint limiting instruction; 3. improper use of commonwealth witness to bolster complaining witness's testimony; 4. Defendant sentenced to an unlawfull term
in violation statutory, regulatory, decisional, and constitutional law.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: Motion for New Trial Denied

(8) Date of result (if you know): October 9, 2001

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: Norfolk County Superior Court, Dedham, MA

(2) Docket or case number (if you know): NOCV2003-01010

(3) Date of filing (if you know): May 9, 2003

(4) Nature of the proceeding: Petition for State Habeas Corpus Relief

(5) Grounds raised: Petitioner is being deprived of liberty without due process of law by an illegal confinement based upon an unlawfully administered and structured sentence which violates Mass. Gen. L. ch. 127, §149; Mass. Regs. Code tit. 120, §313 (16)2(b)(2); and the Petitioner's right to fundamental fairness, to be free from double jeopardy, to be free from cruel and unusual punishment, and to be free from ex post facto punishment. Petitioner is serving an intervening sentence from and after a parole sentence.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: Pending for 26 months with no meaningful hearing or decision

(8) Date of result (if you know): Pending for 26 months

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☒ No ☐

(3) Third petition: Yes ☐ No ☒

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

Have not directly appealed the state habeas petition because there has been no meaningful hearing on the matter since it was filed. A Mass. Gen. L. ch. 211, §3 petition to the Single Justice was filed to order the Superior Court to take action. The petition was denied. The state habeas petition remains pending.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Petitioner is unlawfully incarcerated in violation of state and federal law.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner was indicted on 92-0378-84 and 92-0668 while at liberty on parole. Bail was set at \$5,000.00. The bail was never posted. A parole violation warrant issued based on the intervening indictments but was not served nor could it be served prior to sentencing because bail was not posted. Under law, a person serves an intervening sentence first followed by the remaining parole sentence. Despite statutory and regulatory law, Petitioner is serving sentence backwards and unlawfully.

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

At time that the direct appeal was filed it was not apparent that the institution was illegally administering the sentence

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Second Motion for New Trial; State Habe. Pet.

Name and location of the court where the motion or petition was filed: _____

Second Motion for New Trial: Berkshire County Superior Court

State Habeas Corpus Petition: Norfolk County Superior Court

Docket or case number (if you know): 2d Motion for New Trial: 92-0378-84; 92-668

Date of the court's decision: October 9, 2001

Result (attach a copy of the court's opinion or order, if available): Motion denied

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Berkshire County Superior Court, Pittsfield, MA

Docket or case number (if you know): 92-0378-84; 92-668

Date of the court's decision: none

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this

issue: In his memorandum and order, Justice Velis agreed that the petitioner must serve the intervening sentence first followed by the parole sentence; however, internal institution documents were not then available which show that the parole sentence was served first.

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

Filed State Habeas Corpus petition in Norfolk County Superior demanding immediate release. Filed on May 9, 2003. Petition still pending due to inordinate delay.

GROUND TWO: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. Norfolk County Superior Court, NOCV2003-01010 State Habe. Supreme Judicial Court SJC-09532 Full Bench review of ruling of Single Justice under 211, §3 denying mandamus relief.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: George Crane, Esquire

(d) At sentencing: George Crane, Esquire

(e) On appeal: Charles K. Stephenson, Esquire

(f) In any post-conviction proceeding: Joseph F. Krowski, Esquire, 30 Cottage street, Brockton, MA 02301

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* On August 22, 2002, the respondent finally produced the petitioner's parole sentence (C-49446) discharge report which demonstrated that the petitioner was compelled to serve his parole sentence first followed by the intervening sentence. Within one year of discovery of this information, petitioner filed a state habeas corpus petition. Judge Cratsley ordered the matter for hearing on June 27, 2003. No hearing was held because the court had no available judges. After many attempts to have the matter heard in Superior Court, the petitioner filed a ch.211, §3 petition to the single Justice seeking an order of mandamus directed to the Superior Court to conduct a hearing. The Petition was denied on May 16, 2005. Petitioner sought review of the Single Justice's order to the full bench which delayed matters because of the Court's concern more with the petitioner's finances than his unlawful incarceration and deprivation of liberty.
- _____
- _____
- _____
- _____
- _____
- _____
- _____

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

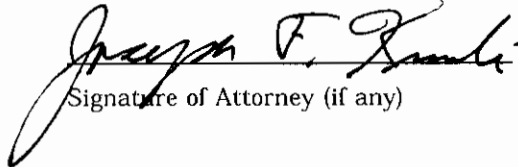
(continued...)

Immediate release

Therefore, petitioner asks that the Court grant the following relief:

from unlawful incarceration.

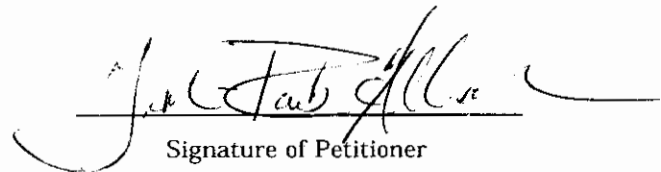
or any other relief to which petitioner may be entitled.


Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on

_____ (month, date, year).

Executed (signed) on 7/15/05 (date).


Signature of Petitioner

*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

* * * * *